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Cronan O'Connell
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EX PARTE

May 23, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W., TW-A325
Washington, DC 20554

RE: CC Docket Nos. 02-33 and 01-337 and CS Docket No. 02-52 -- In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

Dear Ms. Dortch:

On Wednesday, May 21, 2003, representing Qwest Communications International Inc., Cronan O'Connell, Craig Brown, Mary Retka, Tad Jones and Bich-Thuy Ha met with the following representatives of the Federal Communications Commission's Media Bureau: Kyle Dixon, Eric Bash, John Norton, Peggy Greene, Barbara Esbin, Peter Corea, John Kiefer, Alison Greenwald, and Priscilla Lee. The purpose of the meeting, as reflected in the attached presentation, was to discuss Qwest's comments in CC Docket No. 02-33, dated May 3, 2002. Qwest reviewed the current vibrant competitive landscape in the mass market, including consumer and small businesses, as well as the larger business market, and the subsequent harm of the CEI/ONA rules to Qwest vis-a-vis these competitors, and how they are able to compete without such constraints. Additionally, Qwest reviewed its basic DSL offerings to end users, CLECs and ISPs and discussed the fact that even with the relief requested in this proceeding by Qwest, ISPs and CLECs will continue to have multiple alternatives to access the end user.

In accordance with FCC Rule 1.49(f), this *Ex parte* letter and attachment is being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced dockets pursuant to FCC Rule 1.1206(b)(2).

Sincerely,
/s/ Cronan O'Connell

cc:
Kyle Dixon (via e-mail at kdixon@fcc.gov with attachment)
Eric Bash (via e-mail at eric.bash@fcc.gov with attachment)
John Norton (via e-mail at jnorton@fcc.gov with attachment)

Peggy Greene (via e-mail at peggy.greene@fcc.gov with attachment)
Barbara Esbin (via e-mail at barbara.esbin@fcc.gov with attachment)
Peter Corea (via e-mail at peter.corea@fcc.gov with attachment)
John Kiefer (via e-mail at john.kiefer@fcc.gov with attachment)
Alison Greenwald (via e-mail at alison.greenwald@fcc.gov with attachment)
Priscilla Lee (via e-mail at priscilla.lee@fcc.gov with attachment)

Attachment

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Broadband Exparte
May 21, 2003

Overview

- Qwest is not dominant in the provision of broadband services
  - Mass Market
  - Larger Business Market
- ONA/CEI rules adversely impact Qwest and should be eliminated
- Bundled DSL Service should be classified as an information service and subject to Title I
- LECs should have the option to offer volume DSL service to ISPs as private carriage service
- Qwest will continue to offer its customers the means to reach their ISP and Internet content of choice

Qwest DSL Service Offerings

1. ***Bundled DSL Service = Qwest DSL + Qwest ISP Service***
   - ***Retail product purchased by end users***

2. ***Volume DSL Service = DSL wholesale product***
   - ***Tariffed at Interstate level and purchased by ISPs***
     (F.C.C. No. 1, Section 8)
     - *ISPs bundle the DSL service with their Internet access and sell directly to end users under their brand name*

3. **Qwest DSL Service = Qwest DSL Host Service + access to 400+ ISPs**
   - **DSL access sold and billed by Qwest to end users (CNS)**
   - **Internet access service sold and billed separately to end users by ISP**
     - *ISP purchases DSL HOST Service per LATA (Tariffed in F.C.C. No. 1, Section 8)*
     - *DSL HOST Service consists of ATM switch port (BSE) and bandwidth (BSA) elements.*

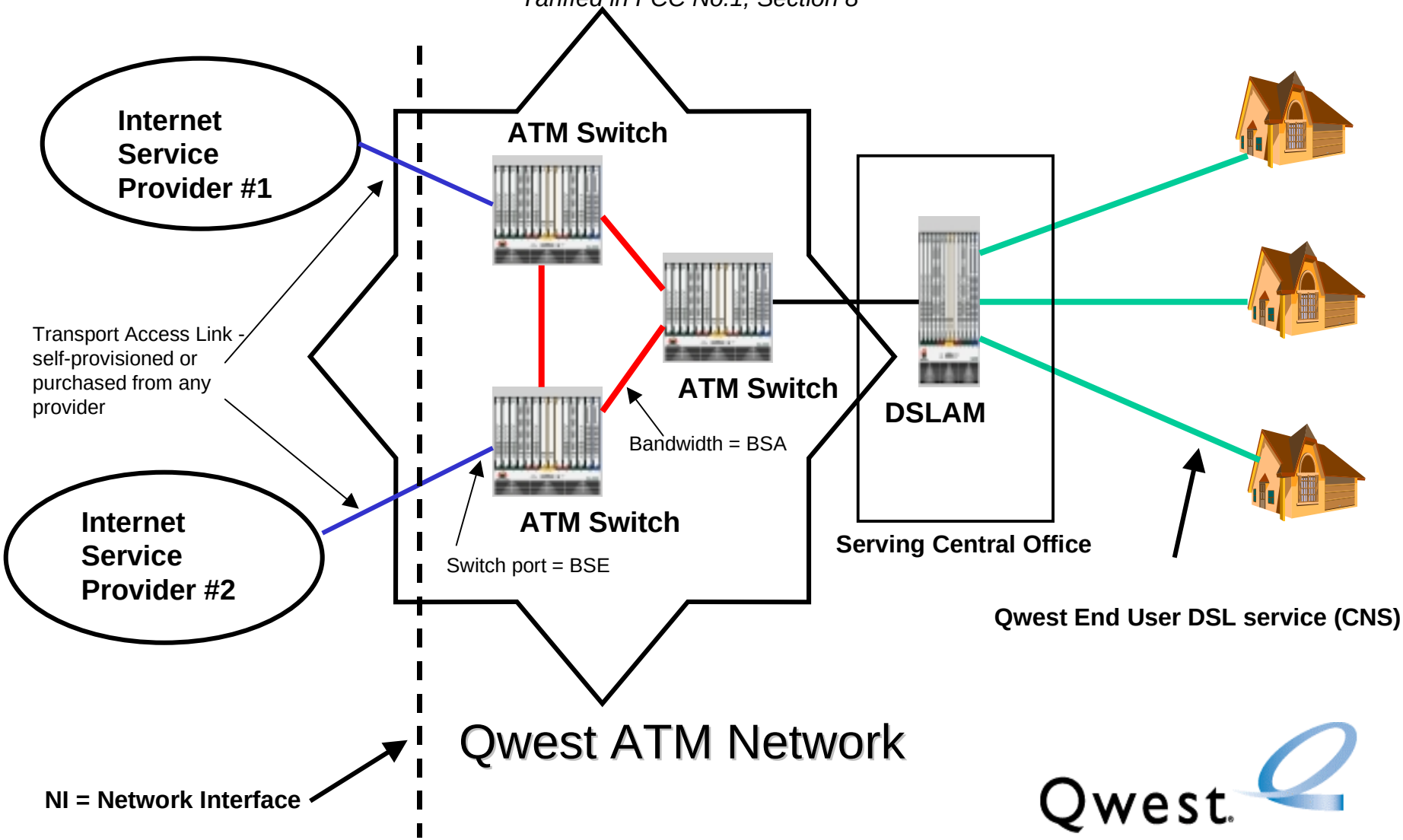
4. **Raw copper loop = UNE sold to CLEC**
   - **UNE at TELRIC rates**

QWEST DSL HOST SERVICE

Qwest DSL HOST Service * is purchased once per LATA by an ISP

Service includes: ATM Switch Port (BSE) + Bandwidth (BSA)

** Tariffed in FCC No.1, Section 8*



Qwest Spirit of Service

Qwest DSL Service (#3) Provides Open Access to the Internet

- **Qwest DSL service allows end-users to subscribe to the ISP of their choice from a list of over 400 participating ISPs.**
- **Access to internet content is controlled by the ISP who purchases Qwest DSL Host service.**
- **Unlike Cable Modem providers, Qwest allows any ISP to purchase Qwest DSL Host service for access to end-users.**
- **Qwest's "stand alone" service satisfies concerns that ISPs cannot access Qwest's end-users.**

The Qwest in the Broadband Marketplace

- **Qwest Broadband Markets are differentiated based on customer needs:**
  - **Mass Market: DSL Services**
    - Consumer
      - Occasional users
      - Gamers
      - SOHO
    - Small Business
  - **Larger Business Market: ATM, Frame Relay Services**
    - High Volume Users

The Qwest DSL Mass Market Summary

- **Over 500,000 DSL subscribers region-wide**
  - **70-80% Consumer**
  - **20-30% Small Business**
  - **Support Volume Discount Models**
    - Optionally implemented a Wholesale DSL program (#2) for Consumer ISPs like MSN, AOL
  - **Support 400+ Retail ISPs through Qwest DSL Host service (#3)**

Current Mass Market Competitive Landscape

There are a variety of competitive strategies to target consumers

CLECs / ISPs / DSL Providers	*Cable Providers*	*Wireless / Satellite Providers*
SPEAKEASY McLeodUSA EarthLink AOL.COM	TIME WARNER CABLE comcast COX COMMUNICATIONS	ricochet high-speed wire-free internet DIRECTV dish NETWORK suburban broadband
• While select CLECs leverage UNE-P and UNE-loop facilities at aggressive discounts to Qwest tariff rates, others pursue a pure UNE-P resale strategy to maximize reach • Within consumer, the market is largely ISPs with DSL offers	• Cable modem is by far the dominant broadband provider within every MSA in our 14-state region • Migration of broadband customers to VoIP as technology matures	• Satellite and wireless providers have a presence in the market

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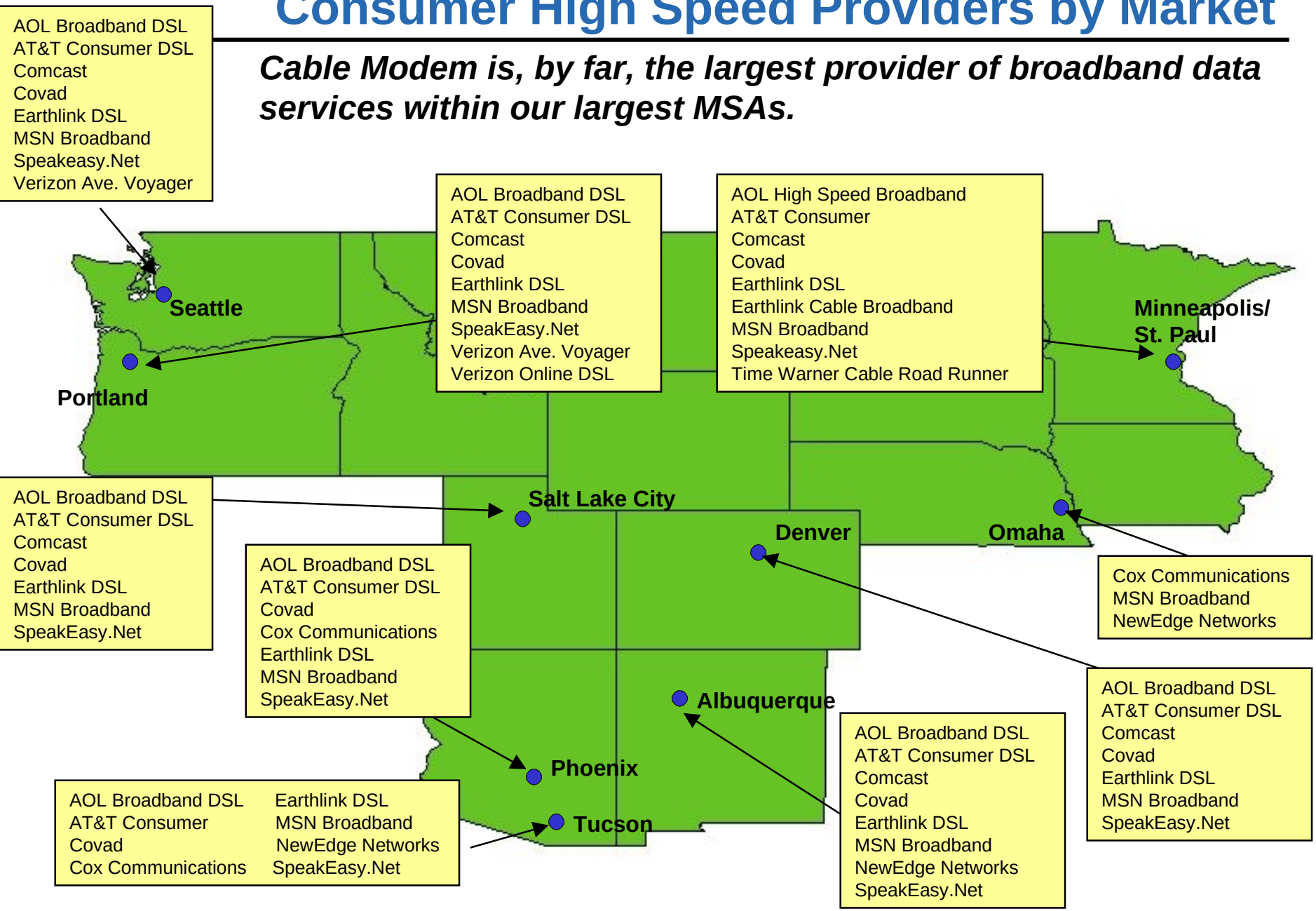
Sources: ARS/Current Analysis National Broadband Database, May 2003

Consumer High Speed Providers by Market

Cable Modem is, by far, the largest provider of broadband data services within our largest MSAs.



Current Mass Market Competitive Landscape

There are a variety of competitive strategies to target small businesses

IXCs

- Leverage current customer relationships to acquire mass market customers
- Offer business lines leveraging network facilities to pursue all SMB customers
- Use unlimited plans to gain LD and local share (WCOM)

CLECs

- CLECs utilize line-sharing and line-splitting strategy to maximize reach
- Pursue customers of all sizes, but are primarily focused on small business customers

CLECs - Integrated Access Providers

- Leverage a UNE-EEL platform to offer integrated access (voice and high speed data)
- Target business customers with more complex telecom needs
- Target price-sensitive stand-alone voice and DSL customers with need for higher bandwidth

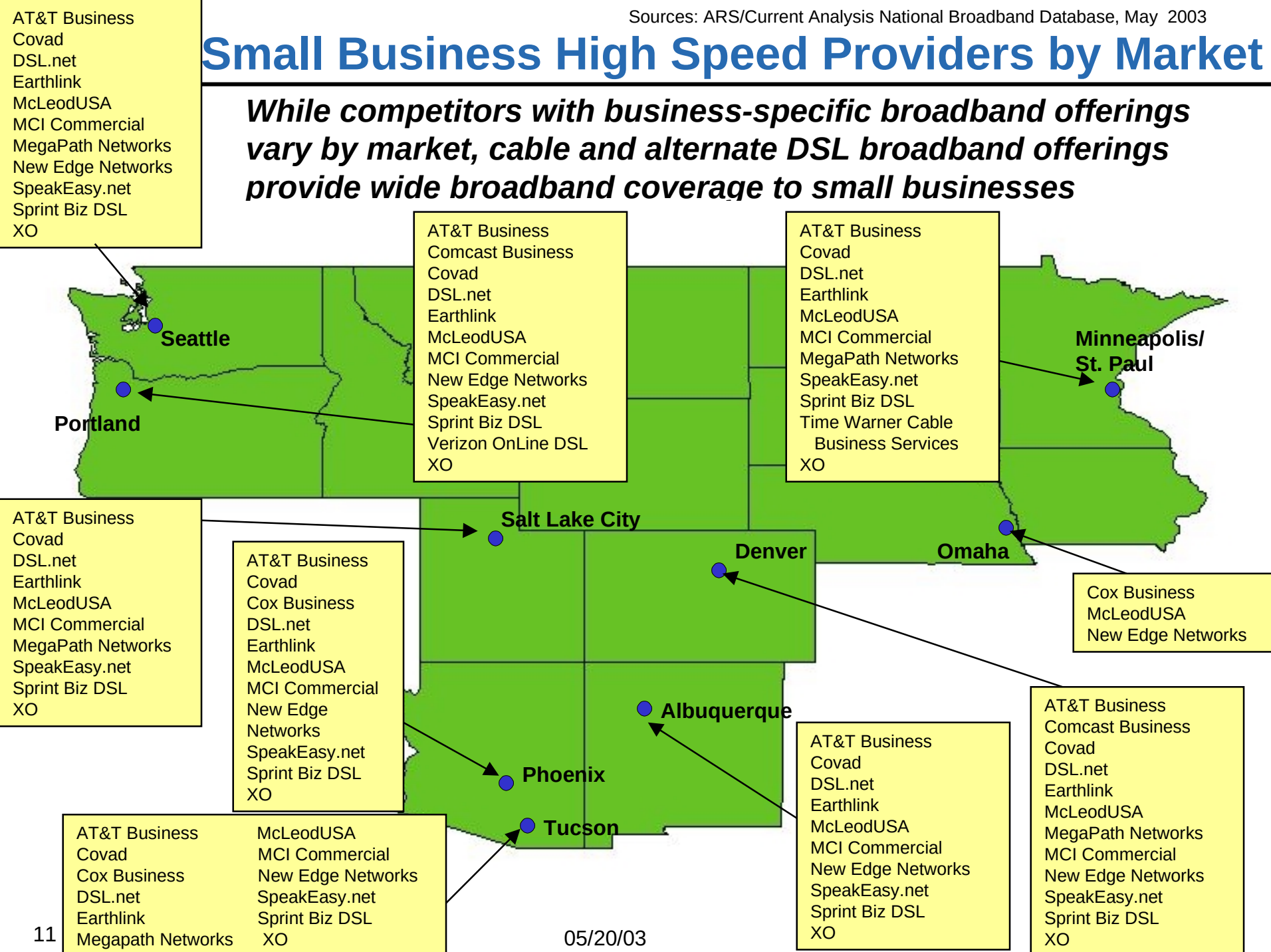
Cable Providers

- Focus on entry level broadband business needs
- Use of residential offering to small businesses creates significant price advantage in the market
- Separate business units like Comcast Business and Cox Business focus on mid-tier

Sources: ARS/Current Analysis National Broadband Database, May 2003

Small Business High Speed Providers by Market

While competitors with business-specific broadband offerings vary by market, cable and alternate DSL broadband offerings provide wide broadband coverage to small businesses



Qwest is not Dominant in the Provision of Broadband Services in the Mass Market

Mass Market Broadband Penetration Summary

- **Nationwide (Form 477, FCC Broadband Report, June '02)**
  - 9% Cable Modem
  - 5% DSL
  - 2% Fixed Wireless
- **Qwest Region: Residential & SOHO (Claritas '02)**
  - 9.5% Penetration for Cable
  - 5.3% Penetration for DSL
- **Top MSAs in Qwest Region: Residential & SOHO (Claritas '02)**
  - 6.5% DSL
  - 11.5% Cable
  - Includes: Boise City, ID; Denver, CO; Minneapolis-St. Paul, MN; Omaha, NE-IA; Phoenix-Mesa, AZ; Portland, ME; Salt Lake City-Ogden, UT; Seattle-Bellevue-Everett, WA; Tucson, AZ

Qwest Larger Business Market Offerings

- **Frame Relay Service**
  - Frame-based packetized service (usually smaller applications)
- **ATM Service**
  - Cell-based packetized service usually for requirements of DS1 bandwidth and higher
- **Traditional Private Line services**
  - DS0
  - DS1
  - DS3
  - OC Services

Current Larger Business Competitive Landscape

- **Frame Relay and ATM Competitors**
  - **National providers with Localized offerings**
    - AT&T
    - Sprint
    - MCI
  - **Localized offerings**
    - Osso Grande
    - ZiaNet
    - New Edge Networks
    - Broadwing
    - Pack Net
    - Level 3
    - UU Net
    - Time Warner Telcom

Qwest is not Dominant in the Provision of Broadband Services in the Larger Business Market

FRAME RELAY SERVICES REVENUES - LOCAL PROVIDERS ONLY		
YE2001 (est.)	**Revenue ($M)**	**Market Share**
SBC	$279.4	25.7%
BellSouth	$253.3	23.3%
Verizon	$245.7	22.6%
Qwest	$203.3	18.7%
AT&T (local)	$31.5	2.9%
WorldCom (local)	$26.1	2.4%
Sprint (local)	$25.0	2.3%
Intermedia (local)	$13.0	1.2%
Other local	$10.9	1.0%
Local Total ($M)	$1,087.0	100%

FRAME RELAY SERVICES REVENUES - NATIONAL/INTERNATIONAL PROVIDERS ONLY		
YE2001 (est.)	**Revenue ($M)**	**Market Share**
WorldCom	$2,500.5	40.4%
AT&T	$2,364.4	38.2%
Sprint	$507.5	8.2%
Equant	$315.7	5.1%
Infonet	$173.3	2.8%
Intermedia	$130.0	2.1%
Other national/int'l	$198.1	3.2%
National/Int'l Total ($M)	$6,189.4	100%

Qwest rolled into "Other Nat'l/Int'l"

Source: IDC, June 2002

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Qwest is not Dominant in the Provision of Broadband Services in the Larger Business Market

ATM REVENUES - LOCAL PROVIDERS ONLY		
YE2001 (est.)	Revenue ($M)	Market Share
SBC	$113.9	54%
Verizon	$52.5	25%
Qwest	$22.9	11%
BellSouth	$16.6	8%
MCI WorldCom (loc.)	$2.6	1%
AT&T (local)	$2.1	1%
Other (local)	$1.9	1%
Local Total ($M)	$212.5	100%
ATM REVENUES - NATIONAL/INTERNATIONAL PROVIDERS ONLY		
YE2001 (est.)	Revenue ($M)	Market Share
MCI WorldCom	$352.9	29%
AT&T	$278.9	23%
Sprint	$230.7	19%
Broadwing	$107.4	9%
Infonet	$72.8	6%
Intermedia	$61.7	5%
Cable & Wireless	$48.1	4%
Qwest	$33.3	3%
Equant	$33.3	3%
Other national/int'l	$16.0	1%
National/Int'l Total ($M)	$1,234.1	100%

Source: IDC, June 2002

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There is harm to Qwest if ONA and CEI Rules continue to apply

Unnecessary regulations add cost to the business and result in lost business opportunities.

Requirements:	**Results:**
❑ Development and maintenance of BSA/BSE/CNS tariffs. ❑ Development and maintenance of a CEI plans. ❑ Filing of ONA reports (annual filing, and quarterly Installation and Maintenance Reports).	❑ Tariffing requirements impede "just say when" business opportunities (30-day advance notice required). ❑ Tariff timeframes foreclose Qwest's ability to change business priorities in response to market demands. ❑ Tariff "One Size Fits All" approach limits Qwest's ability to tailor offerings and business deals to meet customers' specific needs. ❑ Disparity in regulatory requirements affects Qwest's ability to compete in this vibrant marketplace.

Lost Business Opportunities

- **Advanced Tariffing**
  - **Gives competitors notice before promotional periods, resulting in time for reaction and advance marketing.**
  - **Drives up Qwest's cost of customer acquisition.**
  - **Delays Qwest's response to cable promotions**
- **Market Responsiveness**
  - **Cable companies are able to negotiate long term exclusive deals with new commercial and residential developments.**
  - **Common Carrier obligations foreclose such an opportunity for Qwest.**

There is No Public Interest Harm if the CEI and ONA Rules are eliminated for RBOC DSL Services

Information Service subject to Title I

1. **Bundled DSL Service = Qwest DSL + Qwest ISP Service**
   - **Retail product sold to end users**

Private Carriage subject to Title I

2. **Volume DSL Service = DSL wholesale product**
   - **Wholesale product sold to ISPs**
   - **ISPs bundle the DSL service with their Internet access and sell directly to end users under their brand name**

End Users, ISPs & CLECs will still have multiple alternatives

3. **DSL Service = Qwest DSL + access to 400+ ISPs**
   - **DSL access sold and billed by Qwest to end users**
   - **Internet access service sold and billed separately by ISP to end users**
     - *ISP purchases DSL Host Service from Qwest once per LATA*
     - *DSL Host Service consists of ATM switch port and Bandwidth elements*
     - *Tariffed in F.C.C. No. 1, Section 8*

4. **Raw copper loop = UNE sold to CLEC**
   - **UNE at TELRIC rates**

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A LEC's Provision of Bulk DSL Services to ISPs Is a "Private Carriage" Service, Not a "Common Carrier" Service

- **Earthlink ignores the Commission's most recent and most relevant legal precedent: the classification of bulk broadband transmission to ISPs by cable companies.**
- **Classification of a service as private or common carriage turns primarily on "the manner and terms by which [the LECs] approach and deal with their customers."**
- **The sale of bulk DSL to ISPs reflects each of the identifying characteristics of private carriage identified in *NARUC I*:**
  - **Offerings often tailored to the particular needs of the ISP**
  - **Typically sophisticated customers, with a detailed understanding of their DSL needs**
  - **Medium-to-long term agreements**

A LEC's Provision of Bulk DSL Services to ISPs Is a "Private Carriage" Service, Not a "Common Carrier" Service

- **Earthlink's circular reasoning does not support classification of bulk DSL as a common carrier service**
  - **As noted, there is no basis for maintaining Computer II and III requirements, including the tariffing obligation.**
  - **Cable modem services cannot be ignored.**
- **The ILECs lack market power in the provision of DSL services**
  - **ILECs are running a distant second to the cable companies in the provision of broadband services.**
  - **ILECs face extensive competition from cable, CLEC, wireless, and satellite providers.**
  - **ISPs enjoy significant bargaining power based on customer loyalty and the competitive threat of cable modem services.**

The Commission Must Give LECs a Choice of Providing Bulk DSL Services to ISPs on a Private Carriage Basis

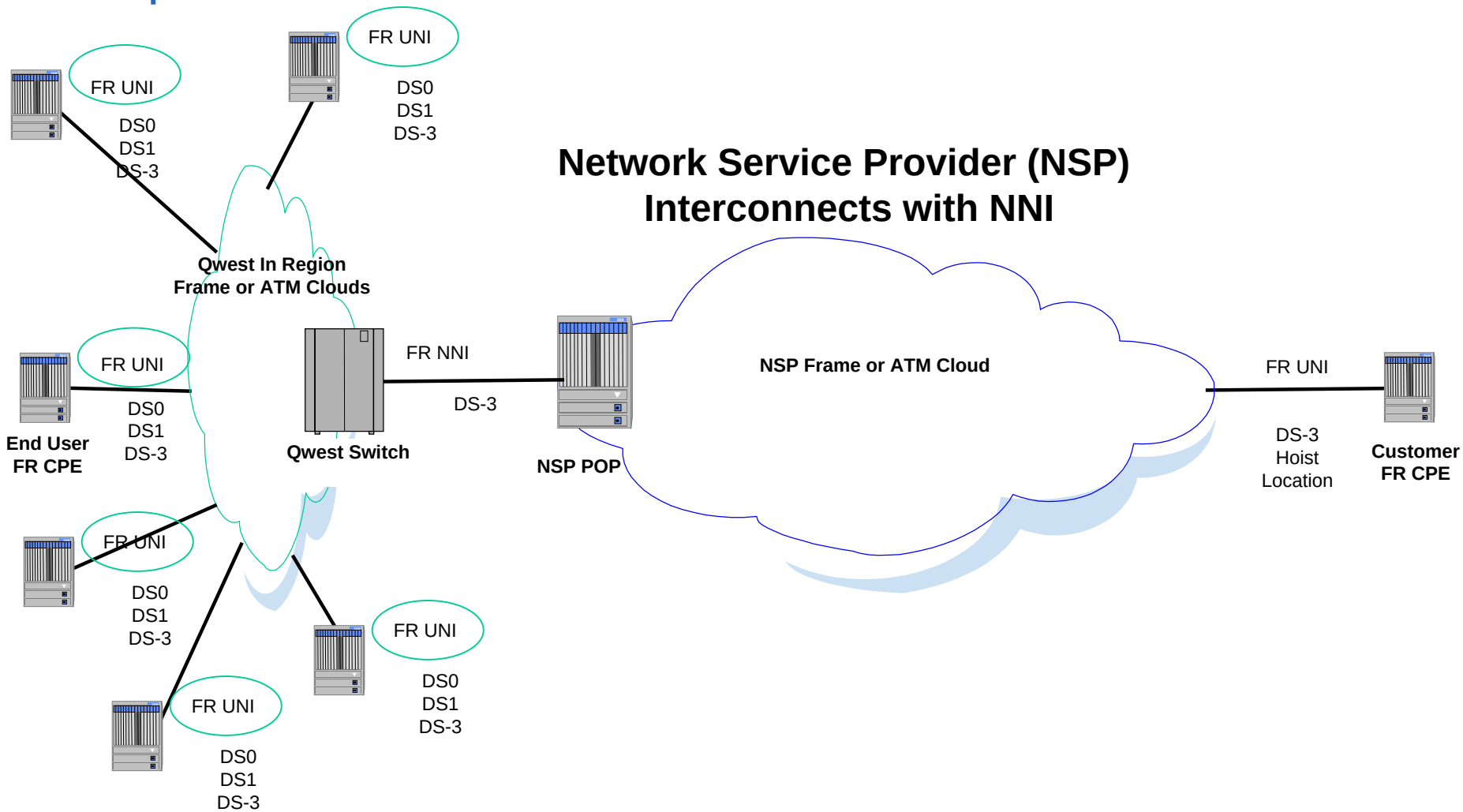
- **Consistent with its earlier treatment of submarine, satellite, and wireless services, the Commission has allowed cable modem providers to serve ISPs on a private carriage basis.**
- **Classification of bulk DSL as private carriage would allow LECs to further tailor their offerings to ISPs.**
- **Some LECs may choose to offer DSL to ISPs on a common carriage basis.**

Conclusion

- **ILECs are not dominant in the provision of broadband services, and should be regulated just like cable modem providers in the provision of competing services.**
- **Bundled DSL service should be classified as an information service subject to Title I, and free of any ONA/CEI obligations.**
- **Bulk DSL service may be offered on a private carriage basis, subject to Title I.**
- **End users, ISPs and CLECs will continue to have multiple options.**

Attachments

NNI Example



Utilizes Qwest In Region Network

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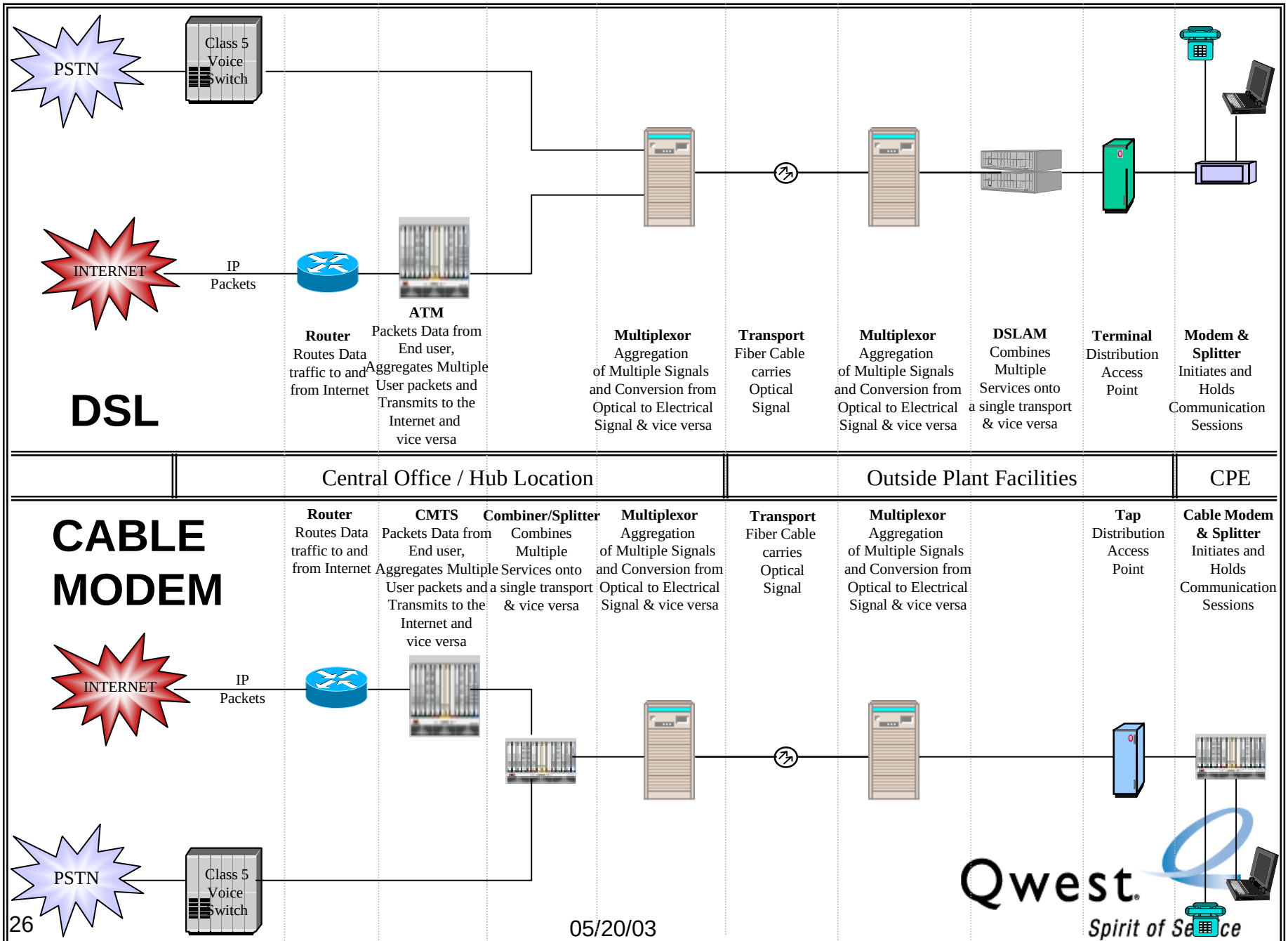
DSL and CABLE MODEM Outside Plant and Central Office Architecture



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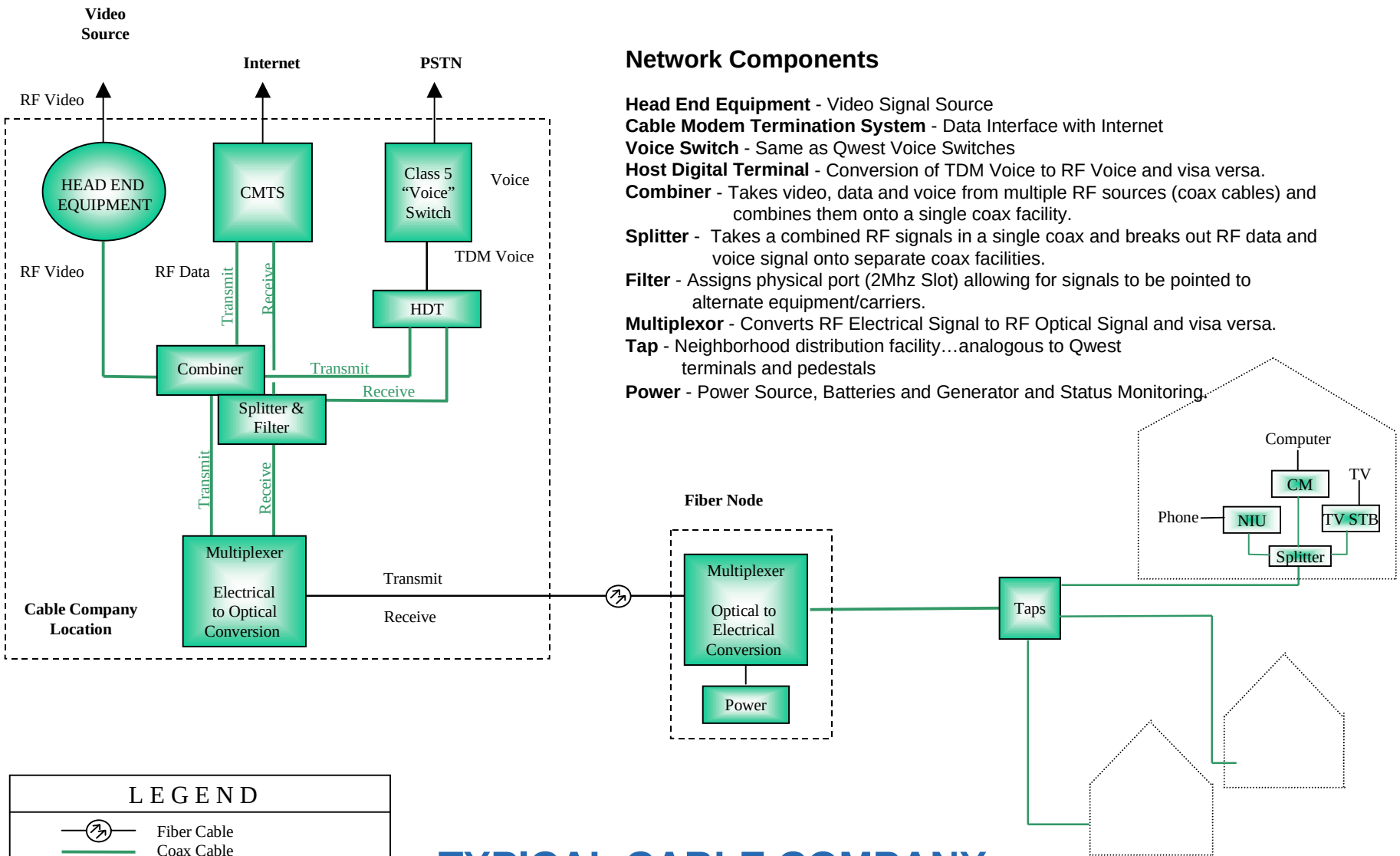

Network Components

Head End Equipment - Video Signal Source
Cable Modem Termination System - Data Interface with Internet
Voice Switch - Same as Qwest Voice Switches
Host Digital Terminal - Conversion of TDM Voice to RF Voice and visa versa.
Combiner - Takes video, data and voice from multiple RF sources (coax cables) and combines them onto a single coax facility.
Splitter - Takes a combined RF signals in a single coax and breaks out RF data and voice signal onto separate coax facilities.
Filter - Assigns physical port (2Mhz Slot) allowing for signals to be pointed to alternate equipment/carriers.
Multiplexor - Converts RF Electrical Signal to RF Optical Signal and visa versa.
Tap - Neighborhood distribution facility…analogous to Qwest terminals and pedestals
Power - Power Source, Batteries and Generator and Status Monitoring.

LEGEND

Fiber Cable
Coax Cable
Coax Cable Drop

CM	Cable Modem
NIU	Network Interface Unit
TV STB	Television Set Top Box
CMTS	Cable Modem Termination System
HDT	Host Digital Terminal

TYPICAL CABLE COMPANY ARCHITECTURE

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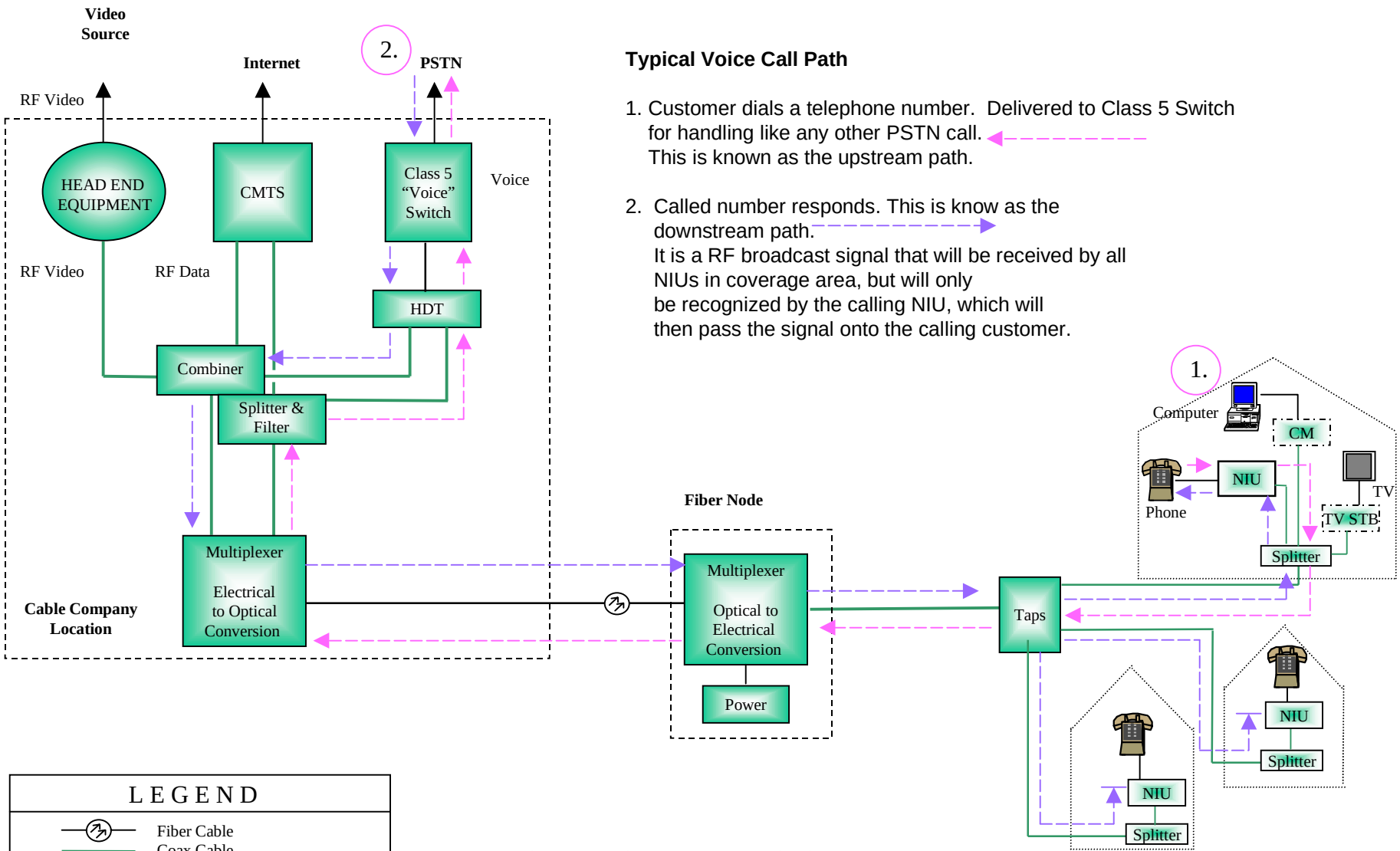

Typical Voice Call Path

1. Customer dials a telephone number. Delivered to Class 5 Switch for handling like any other PSTN call. This is known as the upstream path.

2. Called number responds. This is know as the downstream path. It is a RF broadcast signal that will be received by all NIUs in coverage area, but will only be recognized by the calling NIU, which will then pass the signal onto the calling customer.

LEGEND	
Fiber Cable	
Coax Cable	
Coax Cable Drop	
CM	Cable Modem
NIU	Network Interface Unit
TV STB	Television Set Top Box
CMTS	Cable Modem Termination System
HDT	Host Digital Terminal

TYPICAL CABLE COMPANY VOICE CALL FLOW

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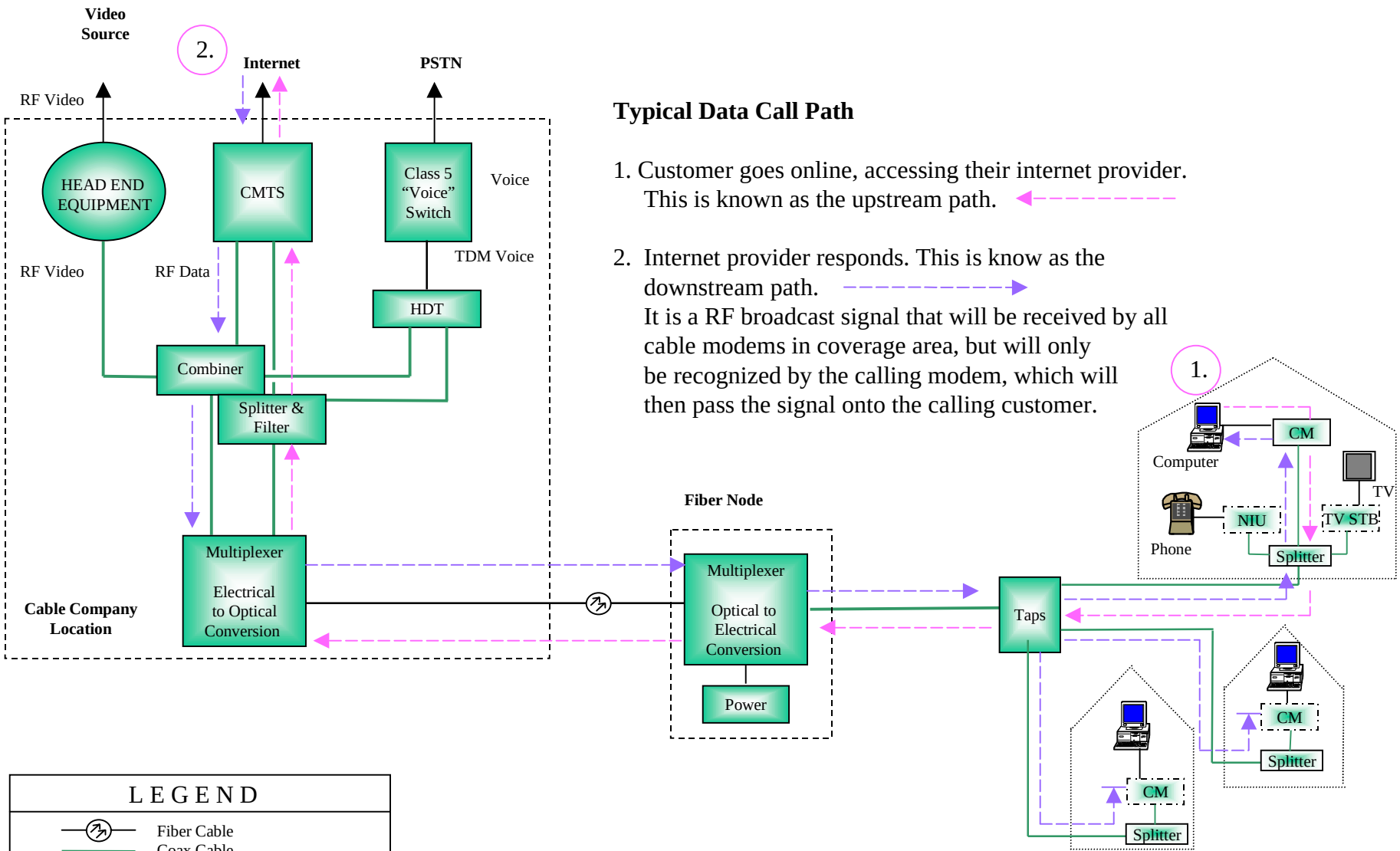

Typical Data Call Path

1. Customer goes online, accessing their internet provider. This is known as the upstream path.

2. Internet provider responds. This is know as the downstream path.
It is a RF broadcast signal that will be received by all cable modems in coverage area, but will only be recognized by the calling modem, which will then pass the signal onto the calling customer.

LEGEND	
Fiber Cable	
Coax Cable	
Coax Cable Drop	
CM	Cable Modem
NIU	Network Interface Unit
TV STB	Television Set Top Box
CMTS	Cable Modem Termination System
HDT	Host Digital Terminal

TYPICAL CABLE COMPANY DATA CALL FLOW

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